

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LENNY COULOMBE,

Plaintiff,

V.

**TOTAL RENAL CARE HOLDINGS, INC.,
DAVITA, INC.,**

Defendants.

No. CV6-504 JLR

DECLARATION OF JAMES SANDERS
IN SUPPORT OF DEFENDANT'S CROSS
MOTION FOR SUMMARY JUDGMENT
RE: LIABILITY ON WASHINGTON
WAGE STATUTE CLAIM AND
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

JAMES SANDERS states and declares as follows:

1. I am one of the lawyers representing defendant DaVita Inc. ("DaVita") in this litigation. I am over the age of 18, competent to testify, and make this declaration based upon my personal knowledge and the files and records in this matter.

2. Attached as Exhibit "A" are true and correct copies of excerpts of the deposition of Steve Uidious taken on August 8, 2006, including certain exhibits attached thereto.

3. Attached as Exhibit "B" are true and correct copies of excerpts of the deposition of plaintiff Leonard Coulombe taken on August 25, 2006, including certain exhibits attached thereto.

4. Attached as Exhibit "C" are true and correct copies of excerpts of the deposition of DaVita's 30(b)(6) representative, Steve Uidious, taken on September 14, 2006.

Signed this 25th day of September 2006, at Seattle, Washington.

/s/ James Sanders
JAMES SANDERS

DECLARATION OF JAMES SANDERS - 2
(NO. CV6-504 JLR)
[38585-0002/SI.062650.149]

PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
(206) 583-8888

CERTIFICATE OF SERVICE

On September 25, 2006, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

David E. Breskin
Short Cressman Burgess PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088
Attorneys for Plaintiff

— Via hand delivery
— Via U.S. Mail, 1st Class,
Postage Prepaid
— Via Overnight Delivery
— Via Facsimile
X Via E-filing

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, on September 25, 2006.

s/James Sanders, WSBA #24565
State Bar Number: 36919
James Sanders, WSBA #24565
Brian M. Flock, WSBA #36919
Attorneys for Defendant
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Fax: (206) 359-9000
E-mail: JSanders@perkinscoie.com

DECLARATION OF JAMES SANDERS - 3
(NO. CV6-504 JLR)
[38585-0002/SI 062650 149]

PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
(206) 583-8888

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

- - -
LEONARD COULOMBE : NO CV06-504
:
v. :
:
TOTAL RENAL CARE :
HOLDINGS, INC. :
DAVITA INC. :
- - -

AUGUST 8, 2006

- - -
Telephonic oral deposition of
STEVE J. UDICIOUS, taken pursuant to
notice, was held at the law offices of
AKIN, GUMP, STRAUSS, HAUER & FELD, LLP,
One Commerce Square, 2005 Market Street,
Suite 2200, Philadelphia, PA beginning at
1:45 p.m., on the above date, before
Nancy D. Ronayne, a Professional Court
Reporter and Notary Public in the
Commonwealth of Pennsylvania.

- - -
ESQUIRE DEPOSITION SERVICES
Four Penn Center
1600 John F. Kennedy Boulevard-12th Floor
Philadelphia, Pennsylvania 19103
(215) 988-9191

**Declaration of
J. Sanders -4**

Exhibit A

1 APPEARANCES:

2
3 SHORT CRESSMAN & BURGESS, PLLC
4 BY: DAVID E. BRESKIN, ESQUIRE
999 Third Avenue
5 Suite 3000
6 Seattle, WA 98104-4088
(206) 682-3333
(Via telephone)
7 Representing the Plaintiff
8

9 PERKINS COIE, LLP
10 BY: JAMES SANDERS, ESQUIRE
and
11 BRIAN M. FLOCK, ESQUIRE
1201 Third Avenue
12 Suite 4800
Seattle, WA 98101-3099
(206) 359-9000
(Via telephone)
13 Representing the Defendant
14
15 - - -
16
17
18
19
20
21
22
23

24 **Declaration of
J. Sanders -5**

1

2

3

STEVEN J. UDICIOUS, after
having been duly sworn, was
examined and testified as follows:

6

7

DIRECT EXAMINATION

8

9

BY MR. BRESKIN:

10

11

Q. Mr. Udicious, can you hear
me, okay?

12

A. Yes.

13

14

Q. Great. Would you state your
full name and address for the record.

15

16

17

18

A. Name is Steven with a V,
Udicious, U-D-I-C-I-O-U-S. Address, 1300
Wendover, W-E-N-D-O-V-E-R, Road,
Rosemont, PA 19010.

19

20

Q. Have you had your deposition
taken before?

21

A. I have.

22

Q. When was the last time?

23

24

A. The last time was probably

-- probably two or three years ago.

1 was available there. It's not as if you
2 could tie specific options that were
3 either voluntarily relinquished or
4 expired by their terms, you couldn't tie
5 those shares to any specific future
6 grant.

7 Q. Is it correct that the
8 company decided to seek return from
9 employees of existing stock options in
10 2000 rather than seeking amendments to
11 the option plans to increase the number
12 of options that could be issued?

13 MR. SANDERS: I'm sorry,
14 could you restate? That question
15 seemed vague to me also.

16 BY MR. BRESKIN:

17 Q. Mr. Udicious, you told me
18 that there were two plans under
19 consideration in 2001, one was to seek
20 return from employees of existing stock
21 options, and a second plan or proposal
22 was to seek amendment of stock option
23 plans to increase the number of options
24 that could be issued; is that correct?

1 A. That's correct.

2 Q. And did the company choose
3 one of these ways to go?

4 A. They -- they pursued both.
5 The relinquishments were pursued in the
6 second half of 2000 into early 2001. And
7 then they pursued a shareholder approval
8 of a stock option plan amendment in 2001.

9 Q. And why did they do that in
10 2001?

11 A. In order to secure
12 additional shares for future grants.

13 Q. How many additional shares
14 were secured in that way?

15 A. I don't recall. I think the
16 number that was approved by the
17 stockholders of additional shares was
18 something on the order of 2.5 or 2.75
19 million.

20 Q. And how many shares were
21 obtained in 2000 and early 2001 through
22 the program of seeking shares back from
23 or options back from employees?

24 A. I don't recall the specific

¹ Richard Fontaine.

2 Q. Do you know whether he still
3 has some relationship with DaVita?

4 A. I believe he's still on the
5 board of directors.

6 (Exhibit-5 marked for
7 identification.)

13 THE WITNESS: Correct.

14 BY MR. BRESKIN:

15 Q. Mr. Udicious, you should be
16 looking at a letter from Mr. Coulombe to
17 you dated November 22, 2000 with a copy
18 to Jonathan Wolin. Is that what you're
19 looking at as Exhibit 5?

20 A. Yes.

21 Q. Did you draft this letter?

22 A. I prepared the form of this
23 letter, yes.

24 Q. And is my understanding

1 correct that this is a form letter that
2 was sent to a number of DaVita employees
3 who had stock options?

4 A. Yes.

5 Q. And the letter was sent as a
6 form letter with a signature block for
7 the employee's signature; is that
8 correct?

9 A. Yes.

10 Q. And did you do that or was
11 there somebody on your staff that did
12 that, how did that work?

13 A. Somebody on my staff.

14 Q. Who was responsible for
15 sending those letters out?

16 A. The letters were prepared by
17 my assistant at the time, Nadia Antoun,
18 using information provided to her by the
19 DaVita accounting department in Tacoma,
20 Washington who kept the information
21 regarding the outstanding stock options.

22 In particular a gentleman named Aaron
23 Westlund. She prepared the letters and
24 then my recollection is that the letters

1 the witness may answer.

2 THE WITNESS: I don't recall
3 specifically who received stock
4 options after that period of time.
5 There were certainly many people
6 who did.

7 BY MR. BRESKIN:

8 Q. You were not involved in the
9 redistribution to those individuals?

10 A. I was involved in the
11 preparation of the agreements relating to
12 subsequent option grants but I was not
13 involved in the determination of who
14 would receive options after that date,
15 except to the extent I was involved in
16 discussions with Mr. Thiry to whom I
17 reported regarding option grants for
18 employees who reported to me.

19 Q. The Answer says: The
20 successful relinquishment program also
21 allowed DaVita to obtain shareholder
22 approval to issue another 2.75 million
23 option shares, which were also
24 distributed so as to attract and retain

the most valuable DaVita team members.

First of all, is that accurate that the relinquishment program that included Mr. Coulombe's options allowed DaVita to obtain shareholder approval for the issuance of another 2.75 million option shares?

A. Yes. The relinquishment contributed to the ability to get 2.75 million shares rather than getting approval for a much lower number of shares.

Q. Can you explain that a little more to me, how those two things go together?

A. In looking at a proposal to stockholders to approve additional option shares investors, in particular institutional investors, look at the pool of existing options that are available to the employees of the company, both options that are outstanding and unexercised as well as shares remaining in plans that are available for future



21250 Hawthorne Boulevard, Suite 800
Torrance, CA 90503-5517
Tel: (800) 310-4872 Fax: (310) 792-8928

November 22, 2000

Steve Udicious
General Counsel
DaVita Inc.
21250 Hawthorne Blvd., Suite 800
Torrance, CA 90503-5517

Dear Steve:

As of the date of this letter, I hereby voluntarily relinquish my stock options with the grant date and exercise prices listed below. I understand that by doing so, I will not be eligible for an additional option grant for a period of six months from the date of this letter. I also confirm that I have not been promised replacement options or any other form of consideration in exchange for relinquishing these options.

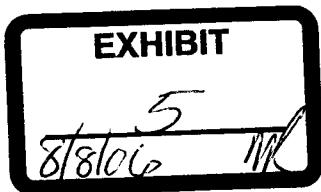
<u>Grant Dates</u>	<u>Options</u>	<u>Exercise Price</u>
04/24/1997	5,833	\$18.75
04/24/1997	25,000	\$18.75
02/27/1998	30,000	\$32.19

Sincerely,

Leonard Coulombe

cc: Jonathan Wolin

Declaration of
J. Sanders - 13



DV 0238
Coulombe

DaVitaTM

CONFIDENTIAL MEMORANDUM

TO: Kent Thiry
Joe Mello
Rich Whitney
Bill Schilling

FROM: Steve Udicious *S*

DATE: February 27, 2000

RE: Updated WOOTM Report

Notes

- "Kept" = Affirmative response that decided to keep options
- "Kept" and "No Response" have same effect – options still outstanding
- Employees who received September 2000 grants were not solicited, will be solicited in March 2001

I. Options greater than \$15.00

Relinquished		
Kept	937,204	65%
No Response	353,755	11%
	<u>438,781</u>	<u>24%</u>
	1,729,740 shares	100%

II. Options \$15 - \$19 (subset of I)

Relinquished		
Kept	408,644*	39%
No Response	348,643	34%
	<u>283,279</u>	<u>27%</u>
	1,040,566 shares	100%

* 229,737 shares from VPs, 123,244 shares from directors, 55,663 shares from
below director level

EXHIBIT

10
818106 NRC

Confidential
DV 2281
Columbus

VP and Director Participation \$15 - \$19 (*indicates split decision, listed in both categories)

Relinquished

Title	Name	Share Numbers	Share Price
VP	Bonnie Greenspan	46,417	\$18.75
	Joanne Otsuji	39,279	\$18.75
	Stan Lindenfeld*	97,624	\$18.75
Directors	Anthony Gabriel	7,500	\$19.00
	Dave Manheim*	46,417	\$18.75
	John Russo	38,494	\$17.98
	Lenny Coulombe	30,833	\$18.75
		30,000	\$32.19
	Sandy Hoffman	3,333	\$17.78
		5,000	\$32.19

Kept

Title	Name	Share Numbers	Share Price
VP	Stan Lindenfeld* (required because of divorce settlement)	97,625	\$18.75
Directors	Carole Shepherd	46,417	\$18.75
	Cheryl MacDougall	12,282	\$15.08
	Dave Manheim*	8,010	\$16.34
	Jerry Bell	4,167	\$15.75
	Lynn McGowan	21,417	\$18.75
		5,555	\$17.85
	Melody McCollum	25,000	\$18.75
	Rudy Aguilar	21,417	\$18.75
		46,417	\$18.75

No Response

Title	Name	Share Numbers	Share Price
VP	Glenn Jones	6,230	\$16.34
		22,250	\$15.08
	John McDonough (all options expire 3/15/01 as a result of resignation)	80,000	\$19.00
Directors	Dale Alderman	4,166	\$18.75
		7,500	\$24.38
	Jack White	46,417	\$18.75
	Janet Stephens	3,500	\$15.31
	Linda Considine	12,500	\$32.19
		25,000	\$18.75
	Marie Ficarella	46,417	\$18.75
	Sheldon Reich	8,334	\$18.75
		7,500	\$24.38

Confidential
DV 2282
Coulombe

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LENNY COULOMBE,)
Plaintiff,)
v.)
TOTAL RENAL CARE HOLDINGS,)
INC., DAVITA, INC.,)
Defendants.)
No. CV6-504 JLR
COPY

COPY

DEPOSITION UPON ORAL EXAMINATION OF
LEONARD J. COULOMBE

9:30 a.m.
August 25, 2006
4800 Washington Mutual Tower
1201 Third Avenue
Seattle, Washington

**Declaration of
J. Sanders - 16**

Exhibit B

Reported by Mary C. Tevis, CCR No. 29906

1 APPEARANCES
2
3
4

For the Plaintiff: David Breskin
5 Attorney at Law
6 Short Cressman & Burgess
7 Suite 3000
8 999 Third Avenue
9 Seattle, Washington 98104
10 Phone: 206-682-3333
11 email: dbreskin@scblaw.com

12 For the Defendant: James Sanders
13 Attorney at Law
14 Perkins Coie
15 4800 Washington Mutual Tower
16 1201 Third Avenue
17 Seattle, Washington 98101
18 Phone: 206-359-8000
19 email: jsanders@perkinscoie.com

20 Also present: Steven M. Cooper

21 Videographed by: Mike Elderkin

22
23
24
25 **Declaration of
J. Sanders - 17**

1 WHEREUPON, the following proceedings were held and
2 testimony taken of the witness, who was called at the
3 instance of the Defendant, to-wit:

4 THE VIDEOGRAPHER: Good morning. We are
5 now on the record.

6 Here begins Videotape No. 1, Volume I, in the
7 deposition of Leonard J. Coulombe in the matter of
8 *Leonard Coulombe vs. Total Renal Care Holdings,*
9 *Incorporated, et al,* in the United States District
10 Court, Western District of Washington at Seattle. Case
11 number is CV6-504 JLR.

12 Today's date is August 25th, 2006, and the time is
13 approximately 10:32 a.m.

14 The video operator today is Mike Elderkin of Tevis
15 Court Reporting, 9709 239th Street Southwest, Edmonds,
16 Washington, 98020.

17 This deposition is taking place at the offices of
18 Perkins Coie, 1201 Third Avenue, 48th Floor, Seattle,
19 Washington, 98101, and was noticed by James E. Sanders
20 of Perkins Coie.

21 Counsel, please voice-identify yourselves and state
22 whom you represent.

23 MR. SANDERS: This is James Sanders for
24 defendant, DaVita.

25 **Declaration of
J. Sanders - 18**

 MR. BRESKIN: David Breskin. I'm

1 Q. What did she tell you she was going to do?

2 A. She felt that if people didn't, it was like signing a

3 death warrant.

4 Q. Okay, was she more specific than that?

5 A. No.

6 Q. Okay. Is she still with DaVita?

7 A. Yes.

8 Q. And do you know, did she in fact turn in her options?

9 A. Yes.

10 Q. And you may have said this already, but let me just make

11 sure: Ms. LaMunyon did not turn in her options, to the

12 best of your knowledge?

13 A. That's correct.

14 Q. Okay, she kept them.

15 All right, Cheryl MacDougall, was that the last

16 person?

17 A. Yes.

18 Q. And when did you have your discussion with Ms.

19 MacDougall?

20 A. It was right around that time in November, and Cheryl

21 and I were very close; we basically were the two

22 directors of compliance for the company at the time,

23 reporting directly to Jonathan Wolin, so she and I were

24 of equal stature, and so -- and we had a lot of close

25 interaction and we spoke almost on a daily basis, so we

1 became, you know, friends, both in work and outside of
2 work.

3 Q. And what you were talking about on this occasion?

4 A. Whether or not she was going -- she was talking to me
5 whether or not she was going to turn her options in.

6 Q. What did she tell you?

7 A. She told me that she did, and then she relinquished that
8 -- some of her options were around \$15 or \$17, pretty
9 close to what the price -- the price started to escalate
10 right around that period of time, and she was having
11 second thoughts about some of her options which were
12 priced closer to the \$2 or \$3 from the current price,
13 and she, I think -- although I don't know -- but she
14 told me that she was planning to ask Jonathan if she
15 could relinquish her giving them up.

16 Q. And how did you respond when she told you that?

17 A. I said, If I was in the same position as her with
18 options that were that close, that I would have to think
19 a lot harder about it.

20 Q. Do you know whether in fact she was able to pull back
21 her relinquishment?

22 A. Yes.

23 Q. She was able to?

24 A. Yes.

25 Q. Okay. Did the two of you discuss anything else?

1 anything to suggest that there would be any negative
2 repercussions for not participating?

3 A. Not higher up, no.

4 Q. Okay, it was just either at her level or below?

5 A. Yes.

6 Q. But Ms. Haight, did she tell you that anybody had ever
7 suggested to her that it would be bad for her career to
8 not participate in this?

9 A. No.

10 Q. Nobody at all?

11 A. Not that I know of. I mean, I can't speak for Helen.

12 Q. Do you know, is Ms. MacDougall still with DaVita?

13 A. Yes.

14 Q. And she did in fact not relinquish some of her options,
15 right?

16 A. Yes, I think she gave some up, but some she didn't.

17 Q. Have you ever learned from her or from any other source
18 that anything negative ever occurred to her as a result
19 of pulling back some of her relinquishments?

20 A. No.

21 (Exhibit No. 11 was marked for
22 identification.)

23 Q. Mr. Coulombe, Exhibit 11, which you have in front of you
24 there --

25 A. Yes.

1 Q. -- do you recognize that document?

2 A. Yes.

3 Q. Have you seen it before?

4 A. Yes.

5 Q. Did you receive this on or about December 6th, 2000?

6 A. Yes.

7 (Exhibit No. 12 was marked for
8 identification.)

9 Q. All right, Mr. Coulombe, handing you what's been marked
10 as Exhibit 12, do you recognize this document?

11 A. Yes.

12 Q. Did you receive this document on or about December 19th,
13 2000?

14 A. I don't recall on this one.

15 Q. Have you seen it before today?

16 A. Yes.

17 Q. Are you sure you've received it at some point?

18 A. No, I'm not really sure that I received it, but I did
19 see it when we took Steve Udicious's deposition.

20 Q. So you may or may not have seen it before that; you're
21 not sure?

22 A. Right.

23 Q. Do you remember otherwise being told in any way that if
24 you wanted to cancel any of your earlier
25 relinquishments, you could?

1 A. Yes.

2 Q. Okay, and was that Mr. Wolin that told you that?

3 A. Yes.

4 Q. And how did you respond?

5 A. I had told him that I was going to relinquish them and

6 that I would relinquish them.

7 Q. So you told him that you were going to stick with your

8 original decision?

9 A. Yes.

10 Q. When he approached you about changing your mind, had you

11 already signed and returned Exhibit 10?

12 A. I don't remember; I don't remember the timeline. I may

13 have -- I believe I already did sign it and send it in

14 because the date on it was November, and I believe this

15 -- the date on this is the 19th of December, and I

16 believe that Jonathan -- if I didn't receive this, then

17 he would have spoken to me about it.

18 Q. Okay. Well, can you put it in time at all, in terms of

19 Exhibit 10, at some point after you had signed and

20 returned Exhibit 10, did somebody come to you, even

21 verbally or through a memo like this, and let you know

22 you had the option of going back and cancelling the

23 relinquishment if you wanted to?

24 A. I heard it indirectly through Cheryl, and then later on

25 directly from Jonathan.

1 Q. And are you reasonably comfortable that it was after you
2 had signed and returned Exhibit 10?

3 A. Yes.

4 Q. Did you understand, when you signed and turned in
5 Exhibit 10, and then, you know, declined the opportunity
6 to cancel it, that you were in fact relinquishing these
7 option shares?

8 A. Yes.

9 Q. And you did that knowingly, right?

10 A. Yes.

11 Q. And willingly?

12 A. Yes.

13 Q. Did you expect to get anything in return,
14 notwithstanding Mr. Wolin's comments?

15 A. Yes.

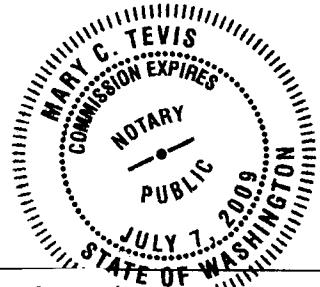
16 Q. And what was that?

17 A. I expected that at some point in the future that I would
18 be compensated through bonuses or some form of reissue
19 of stock options, that at some point I might get that,
20 although I realized, intellectually, that there was no
21 promise associated with that.

22 Q. Mr. Wolin hadn't made any implicit promises to you that
23 he would make sure that you got grants or anything like
24 that, did he?

25 A. No.

1 CERTIFICATE
23 STATE OF WASHINGTON)
4 COUNTY OF KING) ss
56 I, the undersigned Notary Public in and for
7 the State of Washington, do hereby certify:
89 Leonard J. Coulombe,
10 appearing at the instance of the Defendants, appearing
11 before me at the time and place indicated, in said
12 transcript, said deponent, before examination, was by
13 me duly sworn to testify the truth, and that the
14 testimony thereupon given was stenographically recorded
15 by me and transcribed under my direction.
1617 I further certify that I am in no way related
18 to any party to the cause of action concerned, nor to
19 any of counsel, nor do I have a financial interest in
20 the event of the cause.
2122 IN WITNESS WHEREOF, I have hereunto set my hand and
23 affixed my official seal the 30th day of August 2006.
2425 

Mary C. Tevis, Notary Public
of the State of Washington,
residing at Edmonds.



21250 Hawthorne Boulevard, Suite 800
Torrance, CA 90503-5517
Tel: (800) 310-4872 Fax: (310) 792-8928
www.davita.com

November 22, 2000

Steve Udicious
General Counsel
DaVita Inc.
21250 Hawthorne Blvd., Suite 800
Torrance, CA 90503-5517

Dear Steve:

As of the date of this letter, I hereby voluntarily relinquish my stock options with the grant date and exercise prices listed below. I understand that by doing so, I will not be eligible for an additional option grant for a period of six months from the date of this letter. I also confirm that I have not been promised replacement options or any other form of consideration in exchange for relinquishing these options.

<u>Grant Dates</u>	<u>Options</u>	<u>Exercise Price</u>
04/24/1997	5,833	\$18.75
04/24/1997	25,000	\$18.75
02/27/1998	30,000	\$32.19

Sincerely,

Leonard Coulumbe

Exhibit No. 10
Witness Coulumbe
Date 8-25-01
Mary Tevis, Reporter

cc: Jonathan Wolin

DV 0238

Coulumbe

Declaration of
J. Sanders - 26

Transcript of Steven Udicious

Case: Coulombe v. Total Renal Care

Date: September 14, 2006



Phone: 206.287.9066
Fax: 206.287.9832
e-mail: info@buellrealtime.com
Internet: www.buellrealtime.com

Page 1

14:02:30 UNITED STATES DISTRICT COURT
14:02:30 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
14:02:30 -----
14:02:30 LEONARD COULOMBE,)
14:02:30 Plaintiff,)
14:02:30 vs.) CV06-504
14:02:30 TOTAL RENAL CARE HOLDINGS,)
14:02:30 INC., DAVITA INC.,)
14:02:30 Defendants.)
14:02:30 -----
14:02:30 Deposition Upon Oral Examination of
14:02:30 STEVEN UDICIOUS
14:02:30 -----
14:02:30 1:30 p.m. - 5:10 p.m.
14:02:30 September 14, 2006
14:02:30 999 Third Avenue, Suite 3000
14:02:30 Seattle, Washington

14:02:30 Mary M. Paradise, RPR, CCR, CSR
14:02:30 CSR 2469

Page 2

14:02:30

1

A P P E A R A N C E S

2

14:02:30

3

FOR THE PLAINTIFF: DAVID E. BRESKIN

14:02:30

4

Attorney at Law

14:02:30

5

Short Cressman & Burgess

14:02:30

6

999 Third Avenue

14:02:30

7

Suite 3000

14:02:30

8

Seattle, Washington 98104

9

14:02:30

10

FOR THE DEFENDANTS JAMES SANDERS

14:02:30

11

Attorney at Law

14:02:30

12

Perkins Coie

14:02:30

13

1201 Third Avenue

14:02:30

14

Suite 4800

14:02:30

15

Seattle, Washington 98101

14:02:30

16

and

14:02:30

17

STEVEN M. COOPER

14:02:30

18

Attorney at Law

14:02:30

19

DaVita General Counsel

14:02:30

20

601 Hawaii Avenue

14:02:30

21

El Segundo, California 90245

22

23

24

25

Buell Realtime Reporting, LLC
206-287-9066

**Declaration of
J. Sanders - 29**

b5014832-1146-4048-b202-98dac987460f

Page 4

14:02:30 1 Whereupon,

14:02:30 2 STEVEN UDICIOUS,

14:02:30 3 having been duly sworn was called as a witness

4 herein and was examined and testified as follows:

14:02:30 5 E X A M I N A T I O N

14:02:30 6 BY MR. BRESKIN:

14:02:31 7 Q. Mr. Udicious, I'm going to ask you the

8 formality of stating your name and your address for

9 the record?

14:02:37 10 A. Steven Udicious, 1300 Wendover Road,

11 Rosemont, Pennsylvania, 19010.

14:02:44 12 Q. Okay. And do you have an understanding of

13 why you're here today?

14:02:49 14 A. Yes.

14:02:49 15 Q. Tell me what that is.

14:02:51 16 A. The Rule 30(b)(6) deposition for the items

17 that were noted in the notice of deposition.

14:02:59 18 Q. Okay. So you understand you're appearing

19 today as the defendant corporation's

20 representative --

14:03:05 21 A. Yes.

14:03:05 22 Q. -- and testify as to the corporation's

23 knowledge?

14:03:08 24 A. Yes.

14:03:08 25 Q. As opposed to my prior deposition of you,

Buell Realtime Reporting, LLC
206-287-9066

Page 47

1 that correct?

15:14:28 2 A. Yes.

15:14:29 3 Q. Okay. The next bullet point says, "you
4 agreed in April that you would return" -- "would
5 turn in your out of the money options. You now
6 have the opportunity to voluntarily return your out
7 of the money options in order to expand the pool
8 for all participants." Then there's a bracket,
9 "but remember those below director were not
10 informed about this in April," close bracket.

15:15:04 11 A. Uh-huh.

15:15:04 12 Q. Okay. Now, I'm really confused. So in
13 April of 2000, there was an agreement that the
14 directors made to return their shares?

15:15:17 15 A. In April of 2000, there were discussions
16 ongoing throughout the management team about people
17 getting more stock options. The company had gone
18 through tremendous upheaval beginning in the
19 beginning of 1999. The stock price had dropped
20 precipitously. People were concerned that -- about
21 having an incentive to continue to work for the
22 company, particularly they cited that they had
23 options that were out of the money and were
24 essentially worthless and were hoping to get
25 additional option grants.

Buell Realtime Reporting, LLC
206-287-9066

Page 48

15:15:56 1 But as we've discussed, the pool of grants
2 is limited, and it's not an infinite pool that the
3 company can pull from to make grants to people. So
4 there was discussion about it at that time about a
5 way to find more options to be available --
6 available for people, and people were talking
7 generally about these concepts of giving options
8 back, but nothing had yet been implemented.

15:16:25 9 Q. No one had yet agreed in April to return
10 their options, correct?

15:16:28 11 A. There was no written agreement in place
12 that anybody had, whether there were people who, in
13 conversations, had expressed a willingness to do
14 that, because they understood the needs of the
15 company, I -- I think that was occurring.

15:16:41 16 Q. Well, I just want to be clear on this.
17 The first sentence says, "you agreed in April that
18 you would turn in your out of the money options."
19 There weren't any -- there wasn't any director who
20 had, in fact, had agreed in April to return their
21 options?

15:16:56 22 A. Not -- not in a written document, no.

15:16:58 23 Q. Or otherwise?

15:17:01 24 A. I can't say what -- there were
25 conversations going on in the management team, and

Page 95

1 employees in 2000. The scope of this request
2 includes any proposed -- purposes or benefits that
3 the defendant contemplated in seeking return of the
4 stock options.

16:38:33 5 Is there anything additional, beyond what
6 you testified to at your August 8th deposition, as
7 the rationale and purpose for this program that
8 you've learned through your designation as the
9 company's representative today or that the company
10 has?

16:38:53 11 A. No, I -- as I recall my -- my testimony, I
12 think the rationale was stated in the various memos
13 and talking points that we've gone over.

16:39:40 14 MR. BRESKIN: I need to take a break for a
15 minute. Why don't we take a five minute break.

16:39:48 16 MR. SANDERS: Okay.

16:39:49 17 (A short recess was then taken.)

16:54:00 18 BY MR. BRESKIN:

16:54:00 19 Q. I want to -- I want to make sure I
20 understood the response you gave me earlier,
21 because it was confusing, perhaps only to me, from
22 your prior deposition. But in your prior
23 deposition, at page 17, at the bottom of that page,
24 I -- I had asked you, starting at about line 18,
25 what Mr. Thiry's role was with regard to analyzing

Page 96

1 the different proposals that were for increasing
2 the number of options, and you gave me a long
3 answer that was full of a lot of information.

16:54:51 4 But basically, as I understood this
5 answer, you outlined two different proposals or
6 options. One way was to implement this WOOTM
7 program for employees to return their options, and
8 the other was to go to the board and get approval
9 for amendment of the stock option plans to increase
10 the number of shares. Do you see your response
11 there, on page 18, where we talked about that?

16:55:21 12 A. Yes, but it was to go to the shareholders,
13 not the board, for the increase, but yes. Yes.

16:55:25 14 Q. Okay. So you had earlier said that both
15 of those things were done simultaneously?

16:55:33 16 A. Well, not literally simultaneously, but
17 simultaneously in the sense that that decision was
18 made to pursue both. The relinquishment program,
19 and then at the next annual meeting of the
20 stockholders, which was later in 2001, to seek
21 approval of an amendment to increase the number of
22 shares under the existing plans.

16:55:58 23 Q. Okay. But in terms of just the sequence
24 of events, the program to get the employees to
25 return their shares came before going to the

1 shareholders?

16:56:11 2 A. Yes.

16:56:11 3 Q. All right. And in fact, you would have to
4 know how many shares you actually received back
5 before you would know how many you wanted to ask
6 the shareholders to authorize, correct?

16:56:24 7 A. Yes, the number of shares that we had --
8 had been returned would impact how many shares we
9 could ask the shareholders for. Yes, that's true.

16:56:31 10 Q. Was there a total number of shares that
11 had been decided upon as the increase when the
12 decision was made to implement the program to
13 return the shares and to go to the shareholders?

16:56:47 14 A. I think the decision was to -- to go for
15 the maximum amount from our shareholders that we
16 felt we could get approved. Obviously, we would
17 not want the shareholders to vote it down, because
18 then we would have no increase. So the idea was to
19 go for the number that was the largest number, but
20 we felt very confident that the shareholders would
21 approve.

16:57:12 22 Q. Do you remember what that number was?

16:57:13 23 A. I -- I think the number that ultimately
24 was submitted to the shareholders was 2.75 million
25 shares.